



Federal Communications Commission
Washington, D.C. 20554

February 21, 2007

DA 07-783

Robert E. Griffin
1436 Johnson Avenue
San Luis Obispo, CA 93401.

Re: Application for First Class Radiotelegraph Operator's Certificate
FCC File No. 0002583507

Dear Mr. Griffin:

On April 26, 2006, you filed the above-referenced application for a First Class Radiotelegraph operator's certificate (T1).¹ In connection with this application, you requested a waiver² of Section 13.201(b)(1)(iv) of the Commission's Rules, which states that an applicant for a T1 license must, among other requirements, "have one year of experience in sending and receiving public correspondence by radiotelegraph at a public coast station, a ship station, or both."³ For reasons discussed below, we deny the waiver request, and will dismiss the application.

You state, in support of the waiver request, that "[t]he operational requirements for, and the widespread acceptance of the [Global Maritime Distress and Safety System] has resulted in extraordinarily limited use of radiotelegraph-messaging by ships for emergency or maritime safety-related communications," and "the advent, evolution and acceptance of fast, error-correcting digital modes and satellite technology has dramatically shifted operational and regulatory reliance in maritime communications away from maritime radiotelegraphy services both at sea and at coastal stations."⁴ You argue that it would therefore be "an unreasonable hardship and a burdensome requirement to hold new T1 applicants to that portion of Rule 13.201(b)(1)(iv) requiring radiotelegraphy messaging experience be strictly limited to (now virtually moribund) service at public coast stations or ship stations (or both), where other relevant experience is shown."⁵ You seek credit for yourself for your radiotelegraph operating experience in the military and the Amateur Radio Service, including participation in the Military Affiliate Radio System, in lieu of experience at a public coast station or ship station.⁶

Section 1.925(b)(3) of the Commission's Rules provides that the Commission may grant a request for waiver "if it is shown that (i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the

¹ FCC File No. 0002583507 (filed Apr. 24, 2006).

² Waiver Request (filed Apr. 24, 2006).

³ 47 C.F.R. § 13.201(b)(1)(iv).

⁴ See Waiver Request at 4. You further note radiotelegraphy operations at U.S. public coast stations have been "virtually closed since 1999." *Id.*

⁵ *Id.* at 5.

⁶ *Id.* at 6. You attach to the Waiver Request a letter from the American Radio Relay League (ARRL) verifying your experience and proficiency in radiotelegraphy. Letter dated Mar. 7, 2006, from Steve Ewald, Supervisor, ARRL Field Organization/Public Service Team, to FCC.

public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”⁷

We decline to grant the requested waiver. You claim that a waiver is warranted because it is a “hardship” and a “burden” to comply with Section 13.201(b)(1)(iv) due to the absence of opportunities for obtaining radiotelegraphy operating experience at a public coast station or ship station. In order to justify a waiver under the second prong of the Section 1.925(b)(3) waiver standard, however, a waiver applicant bears the burden of demonstrating not only that compliance with the rule would be, *e.g.*, inequitable or burdensome, but that this difficulty is due to “unique or unusual factual circumstances of the instant case....” Here, you do not assert that the requirement of Section 13.201(b)(1)(iv) creates any special burden for you beyond what any applicant for a T1 license would face. Thus, granting a waiver on the basis of the diminished opportunity to fulfill the experience requirement would apply equally to any applicant for a T1 license. Grant of the requested waiver therefore would undermine the rule.⁸ A request for relief from the existing requirement of Section 13.201(b)(1)(iv) would better be addressed in a rulemaking proceeding, rather than through the waiver process.⁹ We therefore deny the waiver request because you have not established the requisite unique or unusual circumstances to support grant of a waiver.

Accordingly, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission’s rules, 47 C.F.R. § 1.925, the waiver request filed by Robert E. Griffin on April 24, 2006, IS DENIED, and application FCC File No. 0002583507 SHALL BE DISMISSED.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission’s Rules, 47 C.F.R. § 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁷ 47 C.F.R. § 1.925(b)(3).

⁸ See Nextel Communications, Inc., *Order*, 14 FCC Rcd 11678, 11691 ¶ 31 (WTB 1999) (“It is axiomatic that the Commission ‘must not eviscerate a rule by a waiver.’ The Commission has been especially reluctant to grant a waiver when to do so would ‘invite numerous other waiver requests which, if granted, would effectively circumvent the Commission’s rulemaking function.’”) (citing, *e.g.*, Riverphone, Inc., T/A Maritel, *Memorandum Opinion and Order*, 3 FCC Rcd 4690, 4692 ¶ 12 (1988); Verilink Corp., *Memorandum Opinion and Order*, 10 FCC Rcd 8914, 8916 ¶ 6 (CCB 1995)).

⁹ The waiver request appears to recognize this point. See Waiver Request at 5 (stating that “[i]t could be argued that the specific experience requirement of Rule 13.201(b)(1)(iv) is itself an anomaly, and that it should be deleted from the regulation”).